

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NEW YORK  
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6 IN RE: FISHER-PRICE ROCK 'N ) MDL No. 1:19-md-2903  
7 PLAY SLEEPER MARKETING, SALES )  
8 PRACTICES, AND PRODUCTS ) This Document  
9 LIABILITY LITIGATION, ) Relates to ALL CASES  
10 \_\_\_\_\_ )  
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13 VIDEOTAPED DEPOSITION OF J. MICHAEL DENNIS, Ph.D.  
14 Redwood City, California  
15 Thursday, November 4, 2021  
16 Volume I  
17  
18  
19

20 Reported by:  
21 CATHERINE A. RYAN, RMR, CRR  
22 CSR No. 8239  
23 Job No. 4846748  
24

25 PAGES 1 - 370

Page 1

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11

12 Videotaped deposition of J.  
13 MICHAEL DENNIS, Ph.D., Volume I, taken on behalf of  
14 Defendant, at Goodwin Procter, LLP, 601 Marshall  
15 Street, Redwood City, California, beginning at  
16 9:06 a.m. and ending at 6:44 p.m., on Thursday,  
17 November 4, 2021, before CATHERINE A. RYAN,  
18 Certified Shorthand Reporter No. 8239.  
19  
20  
21  
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23  
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1 J. MICHAEL DENNIS, Ph.D., 09:07:11  
2 having been administered an oath, was examined and  
3 testified as follows:

4  
5 THE VIDEOGRAPHER: Thank you. 09:07:12  
6 You may proceed.

7  
8 EXAMINATION

9 BY MR. KANNY:

10 Q Could you please state your full name for 09:07:13  
11 the record and spell it too, please.

12 A My first name is John, J-o-h-n, middle  
13 name Michael, M-i-c-h-a-e-l, and last name Dennis,  
14 D, as in "David," e-n-n-i-s.

15 Q What is your date of birth? 09:07:29

16 A April 22nd, 1962.

17 Q Where do you currently reside?

18 A In East Palo Alto.

19 Q Could you provide your address for the  
20 record, please? 09:07:39

21 A Yes. It is 2238 Lincoln Street --  
22 "Lincoln" like our president -- East Palo Alto,  
23 California.

24 Q Dr. Dennis, we met off the record. Let me  
25 just introduce myself for the record. 09:07:54

Page 8

1 entire side of the packaging that's depicted in 16:24:32  
2 Mr. Kivetz's report?

3 A They would see the thumbnail. So the  
4 thumbnail gets blown up to fill up the screen.

5 Q Right. 16:24:42

6 And if you look at page 10 of your report,  
7 that would be thumbnail 2 -- page 10 of  
8 Attachment B. I apologize.

9 A Yeah, I -- I trust you, Counsel. My -- I  
10 have a mess in front of me -- 16:24:58

11 Q That's fine.

12 A -- of paperwork.

13 Q I can represent to you that the thumbnail  
14 that's thumbnail 2 that we were talking about is  
15 just a blowup of that, and same with thumbnail 3. 16:25:06

16 So you didn't show them the complete  
17 product packaging; you made a judgment call that you  
18 didn't want to include that other picture and the  
19 other advertising claim on the bottom of it?

20 A That's basically right. I thought the 16:25:21  
21 user experience was going to get very cluttered with  
22 all these thumbnails.

23 Q Okay. But --

24 A And the focus, of course, is on the front  
25 packaging so that the front packaging panel was 16:25:30

1 shown to all the respondents, and they had the 16:25:34  
2 opportunity to learn about the product that way,  
3 and -- and they saw the key information on the back  
4 panel. That's where a lot of the remaining real  
5 estate is to be shown the respondents. I showed 16:25:49  
6 them that.

7 And then after that, in terms of the  
8 panels I left out, it was largely the same  
9 messaging. It's the product name, about the Rock 'N  
10 Play Sleeper. It's the Fisher-Price branding that's 16:26:02  
11 being used again. So I made a tradeoff. I thought  
12 I could have a better user experience not to have so  
13 many images thrown at them.

14 Q Okay. I appreciate that explanation, but  
15 I just want to get the facts right now. 16:26:19

16 The thumbnail 3, where is that on the  
17 product packaging?

18 A You can see it on page 39 of Dr. Kivetz's  
19 report. It's the upper center.

20 Q So it's the middle of the side of the 16:26:36  
21 packaging?

22 A That's right.

23 Q Okay. And you chose to not show the  
24 consumer the picture of the wake baby looking  
25 directly at you playing with a toy sitting in the 16:26:52

1 Rock 'N Play; is that correct? 16:26:55

2 A Well, this is the control product we're  
3 looking at here on page 39, but I show them the  
4 sleeping baby on the front panel.

5 Q Yeah, I -- I -- I understand that, and 16:27:05  
6 that's on page 8 where that's the front of the  
7 product.

8 A (Witness nods head.)

9 Q What I'm asking you is: You chose only to  
10 include the Fisher-Price in thumbnail 3 -- the 16:27:14  
11 Fisher-Price logo, but not the photo that takes up a  
12 third of the package of the baby awake, staring at  
13 you, sitting in the Rock 'N Play Sleeper playing  
14 with a toy?

15 MR. EVANS: Objection. Mischaracterizes 16:27:38  
16 the document.

17 THE WITNESS: Counsel, why do you say "a  
18 third of the package"?

19 BY MR. KANNY:

20 Q If you look at page 39, and on the top of 16:27:44  
21 the photo that's depicted, there is the side of the  
22 panel.

23 Would you agree with that?

24 MR. EVANS: Objection. Mischaracterizes  
25 document. 16:28:04

Page 273

1 THE WITNESS: Are you talking about the 16:28:04  
2 upper left-hand corner?

3 MR. KANNY: No. I'm talking, right now,  
4 of the entire top of the photo that depicts the  
5 product package, and it looks like a piece that is 16:28:17  
6 folded down. Then there's a picture of a baby.  
7 Then there's a picture of the Fisher-Price logo and  
8 then another photo of a mom awake, lying in bed,  
9 watching the baby.

10 Q And you agree with me that the wake baby, 16:28:34  
11 the logo, and the mother sitting awake, looking at  
12 the baby, would be the top panel -- would be the  
13 side of the --

14 A Okay. I'm following you --

15 Q -- package? 16:28:47

16 A -- now, Counsel.

17 Q Does that -- is that accurate, how I --

18 A It is. I mean, I don't think that's a  
19 third.

20 Q Okay. Well, it's -- between the two 16:28:52  
21 photos, it's more than half of the box.

22 MR. EVANS: Objection. Mischaracterizes  
23 the document.

24 THE WITNESS: More than -- it's not more  
25 than half of the box. 16:29:00

Page 274

1 MR. KANNY: Strike that. 16:29:01

2 Q It's more than half of the side panel that  
3 you did not show?

4 A So it's more than half of a third; is that  
5 what you're saying? 16:29:08

6 Q No.

7 I'm saying, for the top -- so you  
8 didn't -- you didn't -- you're -- you're only  
9 showing four sides; you're not showing six sides.

10 You've chosen what you wanted to show, and 16:29:19  
11 what I'm trying to say is that the pan- -- the  
12 sides -- you showed one of the -- in thumbnail 2,  
13 you showed part of the top and bottom, and you cut  
14 out a photo and some additional advertising that was  
15 contained there. 16:29:35

16 On this side -- the two sides of it you  
17 didn't show, other than in the middle of the top  
18 side that's depicted on page 39, is the Fisher-Price  
19 logo. You decided -- and -- and on that top side of  
20 the -- of the box is two photos. 16:29:53

21 Those two photos are, would you say, more  
22 than half of that packaging?

23 MR. EVANS: Objection.

24 THE WITNESS: No.

25 MR. EVANS: Mischaracterizes the document. 16:30:04

Page 275

1 BY MR. KANNY: 16:30:05

2 Q Half of the packaging of the side?

3 MR. EVANS: Same objection.

4 MR. KANNY: Counsel, this is hard enough  
5 to explain without trying to interrupt here, so -- 16:30:12

6 MR. EVANS: I'm not trying to interrupt.

7 BY MR. KANNY:

8 Q The -- I realize that the side is only  
9 part of the box, but on the part of the box that is  
10 the side, would you agree with me that the photos 16:30:26  
11 make up more than 50 percent of the side panel?

12 A I -- actually, I -- I'm having a hard time  
13 following you.

14 I mean, I'm looking -- I included the  
15 entire front panel. So when you see -- and this is 16:30:41  
16 very hard to do with us sitting, you know, so far  
17 apart.

18 Q I'm not talking about the front panel.

19 A I understand, but the -- the way you're  
20 talking, it sounds like you were. 16:30:50

21 So the front panel includes this picture  
22 of the mother and the child and the inclined "all  
23 night long" language. That's part of the front  
24 panel.

25 Q Understood. 16:31:05

Page 276

1 A You agree? 16:31:05

2 Q Yes.

3 A Okay. So I don't include the baby photo  
4 that's on top of that.

5 Q That's the side panel; would you agree 16:31:09  
6 with that? That gets folded down, and that becomes  
7 the side panel.

8 A I guess it does.

9 I don't include that or the picture that's  
10 immediately below the inclined "all night long." 16:31:19

11 Q Why did you take the -- why -- so let me  
12 ask the first question.

13 A Mm-hmm.

14 Q Whether it's on the side or whether it's  
15 on the face of the product packaging, why would you 16:31:33  
16 take out a photo of a wake baby playing with a toy  
17 staring directly at -- at you?

18 A I made a -- I made a judgment call.

19 Q What was the --

20 A I showed them -- 16:31:49

21 Q What was the basis --

22 A So --

23 Q -- of your judgment call to remove an  
24 awake baby playing with a toy --

25 A Well, again -- 16:31:54

Page 277

1 Q -- when you were doing your consumer -- 16:31:54  
2 A -- I'm not showing -- I would never show  
3 the control product. I don't know why you keep  
4 saying that.  
5 Q This -- this is -- this is the test 16:32:00  
6 product.  
7 A It is the test product?  
8 Q Yes.  
9 A Okay. Look, what I did here is a consumer  
10 perception survey where the respondents needed to 16:32:08  
11 look at the front panel. And I prioritized that  
12 because that is the primary messaging from a  
13 consumer experience. The front panels and -- you  
14 know, there's literature on this. Front panels have  
15 a disproportionate impact -- 16:32:34  
16 Q You have never seen --  
17 A -- on purchasing behavior.  
18 Q -- a -- a product display for a Rock 'N  
19 Play Sleeper that you can recall as you sit here?  
20 A I don't have to. Every -- anybody that 16:32:45  
21 does consumer market research knows the front of  
22 panels of products make a disproportionate impact on  
23 consumers.  
24 Q Let me ask the question again.  
25 You've never seen a product display for a 16:32:55

1 in someplace on it; you put it again in bold, in all 17:55:57  
2 caps right up front for them, front and center, to  
3 see, correct?

4 A I did. That's right.

5 Q And in the -- as we talked about earlier, 17:56:07  
6 in trying to create the environment of how  
7 somebody -- the purchasing environment of how  
8 somebody -- you said surveys are supposed to try to  
9 simulate.

10 Would a disclaimer ever be shown twice, in 17:56:19  
11 all cap, bold, outside the context of the box and in  
12 front and center so that everybody would see exactly  
13 what you're wanting it to see -- what you're wanting  
14 them to see in the manner that you've done it in the  
15 real world? 17:56:36

16 MR. EVANS: Objection. Argumentative.  
17 Misstates report. Misstates testimony.

18 THE WITNESS: From a survey perspective,  
19 what I've done here is perfectly legitimate. I'm  
20 providing additional information. This is a 17:56:47  
21 hypothetical that's being put in front of the  
22 respondent, and I'm giving them this scenario now  
23 where there's additional information that led to  
24 this disclosure, and then I'm asking them about  
25 their purchase likelihood. 17:56:59

1           There -- there's nothing untoward or           17:57:01  
2       irregular about providing this information. This is  
3       an intervention in the way that I inserted this  
4       disclosure into this survey process.

5       BY MR. KANNY:   17:57:15

6           Q     Okay. Well, that's -- we can agree to  
7       disagree on that too.

8                 But you put product packaging on it. It's  
9       one thing if the survey just had words, right? If  
10      the survey just said: Okay. Here's a bunch of           17:57:26  
11      product attributes, and now here's a disclaimer, and  
12      the words of the disclaimer are separately, but you  
13      actually included the product box for somebody to  
14      look at so you can simulate what it's like in the  
15      real world, but then you decided not to use a           17:57:40  
16      disclosure on a box as if that would occur in the --  
17      in the real world. Instead, you separated the text  
18      out so that they had to see it in the manner you  
19      wanted them to see it.

20                Would that be a fair understanding of how       17:57:53  
21      this looks?

22           A     Yeah. This is exactly the way I wanted it  
23      to be.

24           Q     Okay. You compare the Rock 'N Play to  
25      cigarettes?   17:58:10

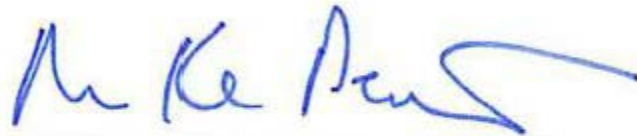
1 I, J. MICHAEL DENNIS, Ph.D., do hereby  
2 declare under penalty of perjury that I have read  
3 the foregoing transcript; that I have made any  
4 corrections as appear noted, in ink, initialed by  
5 me, or attached hereto; that my testimony as  
6 contained herein, as corrected, is true and correct.

7 EXECUTED this 13th day of DECEMBER,

8 2021, at E. PALO ALTO, CALIFORNIA.

9 (City)

(State)

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11   
12  
13

14 J. MICHAEL DENNIS, Ph.D.

15 VOLUME I  
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1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were administered an oath; that  
8 a record of the proceedings was made by me using  
9 machine shorthand which was thereafter transcribed  
10 under my direction; that the foregoing is a true  
11 record of the testimony given.

12 Further, that if the foregoing pertains to the  
13 original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings, review  
15 of the transcript [ X ] was [ ] was not requested.

16 I further certify that I am neither  
17 financially interested in the action nor a relative  
18 or employee of any attorney or any party to this  
19 action.

20 IN WITNESS WHEREOF, I have this date  
21 subscribed my name this 11th day of November, 2021.

22  
23 

24 Catherine A. Ryan, RMR, CRR

25 CSR No. 8239

Page 370

### ERRATA SHEET

**Re: Deposition of J. Michael Dennis, Ph.D., taken on November 4, 2021**  
**Case: In re: Fisher-Price Rock 'N Play Sleeper Marketing**

Page	Line	
55	17	Change: replace "prevalent" with "prevalence" Reason: Typo
144	4	Change: replace "approached" with "approach" Reason: Typo
184	23	Change: replace "mind me" with "my mind" Reason:
194	1	Change: replace "affect" with "effect" Reason: Typo
196	11	Change: replace "affected" with "effective" Reason: Typo
215	5	Change: replace "define" with "defy" Reason: Typo
215	6	Change: replace "defined" with "defied" Reason: Typo
218	6	Change: replace "designer" with "design" Reason: Typo
319	19	Change: replace "frontal" with "front" Reason: Typo
325	9	Change: replace "exclaimers" with "disclaimers" Reason: Typo

  X   Subject to the above changes, I certify that the transcript is true and correct.

           No changes have been made. I certify that the transcript is true and correct.



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December 13, 2021